85-778

Supreme Court, U.S.
FILED
NOV 5 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF

THE UNITED STATES

TONY WORRE,

Petitioner,

v.

SUPREME COURT OF OREGON,

Respondent.

Appeal from the Oregon Supreme Court's opinion

and decree

TONY WORRE
Petitioner, pro se
25025 S. Holman Road
Estacada, Oregon,
97023

QUESTIONS PRESENTED

1. Whether the Oregon Tax Court has the right to be partial in favor of the State of Oregon, Oregon Statute 305.455 (2), violating a citizen's right to impartiality as stated in the Sixth and Fourteenth Amendments to the U.S. Constitution.

2. Whether the Oregon Tax Court has the right to force a citizen to assume the role of accuser, Oregon Statute 305.427, and bear the burden of proof, violating the Fourteenth Amendment to the U.S. Constitution.

3. Whether the Oregon Tax Court can deny a citizen the right to a trial by jury, Oregon Statute 305.425, violating the Sixth and Fourteenth Amendments and Article Three of the U.S. Constitution.

4. Whether the Supreme Court of Oregon, in upholding the decision of the Oregon Tax Court, failed to adhere to the Sixth and Fourteenth Amendments and Article Three of the U.S. Constitution.

5. Whether the Oregon Tax Court and the Oregon Supreme Court, in failing to answer questions on State law, pertaining to Oregon Statutes 305.455 (2), 305.427, 305.425, did knowlingly or unknowingly violate Section 10, Article 1 of the U.S. Constitution.

TABLE OF CONTENTS

	page
Opinions Below	1
Jurisdiction	1
Constitutional Provisions and Statutes	1
Statement of the Case	4
Reasons for Allowance of Writ	5
Conclusion	9
Appendix A	11
Appendix B	16
Appendix C	23
Certificate of Mailing	24

TABLE OF AUTHORITIES

Constitutional Provisions

page

Article III to the U.S. Constitution..... 2,3,5

Amendment VI to the U.S. Constitution..... 1,2,3,5

Amendment XIV to the U.S. Constitution..... 1,2,3,5

Section 10, Article 1 to the U.S. Constitution 4

Statutory Provisions

State of Oregon Statute 305.455 (2)..... 1,2,3,4,5

State of Oregon Statute 305.425..... 2,3,4,5

State of Oregon Statute 305.427..... 3,4,5

OPINIONS BELOW

The opinion of the Oregon Tax Court is attached as Appendix A. The Oregon Supreme Court affirmed the decision of the Oregon Tax Court. Appendix B. Reconsideration was denied. Appendix C.

JURISDICTION

Jurisdiction in the U.S. Supreme Court to hear appeals from State Courts is conferred by 28 U.S.C. of 1257 (2).

The Oregon Supreme Court entered its Order and Opinion on July 16, 1985. Petitioner moved for reconsideration, which was denied by Judge J. Peterson in the Oregon Supreme Court on August 20, 1985. This Petition for Appeal to the U.S. Supreme Court is filed within Ninety (90) days of the entry denying rehearing, in accordance with 28 U.S.C. of 2101 (C), Rules 11 (1) and (3).

CONSTITUTIONAL PROVISIONS AND STATUTES

1. Petitioner alleges that the State of Oregon Statute 305.455 (2) violates amendment VI and amendment XIV of the U.S. Constitution.

O.R.S. 305.455 (2):

> "Notwithstanding the provision of any other law, the provisions of O.R.S. 14.250 relating to the disqualification of a Judge for prejudice shall not be applicable to any Judge serving regularly or temporarily as a Judge of the Tax Court."

Amendment VI U.S. Constitution, in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State. . . ."

Amendment XIV U.S. Constitution, in relevant part:

> ". . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Petitioner alleges that the State of Oregon Statute 305.425 violates the Sixth and Fourteenth Amendments and Article III of the U.S. Constitution.

Oregon Statute 305.425:

"All proceeding before the Court shall be original, independent proceeding and shall be tried without a jury and de novo."

Article III of the U.S. Constitution, in relevant part:

"The trial of all crimes. . . shall be by Jury. . . ."

3. Petitioner alleges that the State of Oregon Statute 305.427 violates the Fourteenth Amendment to the U.S. Constitution.

O.R.S. 305.427:

"In all proceedings before the Tax Court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation."

4. Petitioner alleges that the Oregon Supreme Court in upholding the Tax Court's decision, specifically Statutes O.R.S. 305.455 (2), O.R.S. 305.425, O.R.S. 305.427, violates the Sixth and Fourteenth Amendments and Article III of the U.S.

Constitution.

5. Petitioner alleges that the Oregon Supreme Court and the Oregon Tax Court, in failing to discuss specific Oregon Statutes and act on them, specifically Oregon Statutes 305.455 (2), 305.425, and 305.427, failed to uphold protective guidelines as detailed in Section 10, Article 1 of the U.S. Constitution.

Section 10, Article 1, U.S. Constitution, in relevant part:

> "No State shall. . . pass any bill of attainder, ex post facto law. . . ."

STATEMENT OF THE CASE

Petitioner appeared before the Oregon Supreme Court to appeal a decision from the Oregon Tax Court, denying petitioner's claim for relief, based on U.S. Constitutional violations as well as State of Oregon Constitutional Provisions. The Oregon Tax Court, Judge S. Stewart presiding, in denying petitioner's appeal, failed to answer any qeustions pertaining to issues clearly violating a private citizen's State and Federal rights, and failed to grant petitioner a direct confrontation in Court. The decision of Judge Stewart was made out of Court

alleging secrecy. Petitioner appealed the decision to the Oregon Supreme Court, raising formally all issues of State and Federal Constitutional violations, specifically the VI and XIV Amendments, and Article III of the U.S. Constitution and Oregon Statutes 305.425, 305.427, and 305.455 (2). The Oregon Supreme Court accepted the appeal and upheld the decision of the Oregon Tax Court. Petitioner asked for reconsideration of the Supreme Court's decision and was denied.

REASONS FOR ALLOWANCE OF WRIT

In failing to act on State and Federal Constitutional issues, the Oregon Supreme Court denied petitioner's guaranteed rights. Petitioner will not cite any caselaw regarding violations of State and Federal Constitutional guarantees because they are all straightforward, simplistic, and not open to interpretation, in petitioner's views, other than their concise path to truth.

In the Oregon Tax Court, petitioner alleged that all matters pertaining to constitutionality would be put aside until such time and Court could

answer and act on same. The Oregon Tax Court never referred to this matter in the positive or negative, but the State argued that petitioner had dropped this issue. Petitioner responded that the issue was not dropped but understood that the Tax Court had no authority to act on the constitutional issues at hand, but only enforce the Tax Laws laid down from the Legislature. The Oregon Tax Court did not reply in the positive or negative, and without direct oral confrontation in the Court, petitioner assumed the allegation made to be correct, with the Supreme Court of Oregon as the only means of remedy. Petitioner repeats and the record shows that any and all issues of State and Federal constitutionality were never dropped and should not be used as a blocking technicality against truth.

In reaching by appeal the Oregon Supreme Court, petitioner was granted, for the first time, an oral hearing. No questions of State or Federal constitutional violations were raised, but only issues of misinterpretation of the Tax objectives and procedures. The constant reference by the State and Oregon Supreme Court to the alleged

assumption that the Oregon Revenue Department correctly carried out the imposition of the Oregon Severance Tax and Forest Products Harvest Tax, whether in fact correct or not (which petitioner can show is not), is merely a "smoke screen" to the main issues of Constitutional infringement on an individual's given rights.

Both Courts, the Oregon Tax Court and the Oregon Supreme Court, failed to address the Constitutional issues namely:

a. In forcing a taxpayer to assume the role of accuser, all rights to be judged by his peers are negated.

b. In forcing a taxpayer to bear the burden of proof, the State can lie back and let the system bury all pertinent facts.

c. In legislating the non-removal of Tax Court Judges for partiality to the State, a fair and impartial decision is removed from any who seek truth and justice.

d. In legislating Oregon Statute 321.272, and not removing the ad valorem tax on timber as stated in the Statute, the Oregon Revenue Department did in fact create an

ex post facto law.

The fact that while in the Oregon Tax Court, in writing only, that when the petitioner deferred Constitutional issues to a Court that would be able to act on them, the State quickly used this deferral as a technicality to end the case. The State's insistence that all Constitutional allegations have been dropped shows the petitioner that indeed the State was worried about this aspect of the case and was afraid to talk about them.

CONCLUSION

There is no doubt that if this private citizen were contesting the Oregon legislated Severance Tax and Forest Products Harvest Tax in an open jury trial, presided by an impartial Judge, that all pertinent facts would surface in regard to improper legislation of these taxes, improper adherence to the legislated Law on the Severance Tax, by the Revenue Department, and uniformity of taxation as outlined in Oregon's Constitution. It is understood that the U.S. Supreme Court cannot answer these specific State Tax questions but rather only issues that pertain to U.S. Constitutional violations.

By legislating unconstitutional provisions, in the State of Oregon, blocking a private citizen's ability to defend himself and reach truth, any issue of taxation will always be in favor of the State. It is this private citizen's understanding that the U.S. Constitution was written by our great forefathers, to insure justice and truth, for all its people, and that the rights of its people are secure and sacred and guaranteed.

When the Oregon Revenue Department demanded

an additional Tax on this private citizen's land and when the private citizen refused to pay what he knew was an unjust Tax, then his land became liable to forfeiture by the State. In truth, the State accused the landowner of non-payment of taxes, and being in violation of a legislated law. Yet as incorporated into Oregon Law, the private citizen cannot defend these allegations but must accuse the State and prove the State is wrong, in a partial system of Law designed to protect the State's interests, over and above the citizen's interests. It seems apparent that when the State places itself above its citizens, all concepts of freedom as outlined by this country's founders are lost.

It is hoped, by this citizen, that the U.S. Supreme Court will review the record of what has transpired and accept this case based on State infringements on a private citizen's guaranteed U.S. Constitutional safeguards, and will make a decision based on truth and justice in the American way.

Tony Worre

Respectfully submitted,

TONY WORRE

Petitioner, pro se

Appendix A.

IN THE OREGON TAX COURT

Severance Tax

No. 2092

TONY WORRE,

Plaintiff,

v.

DEPARTMENT OF REVENUE,
State of Oregon,

Defendant.

ORDER OF DISMISSAL

The plaintiff appealed the defendant's denial of plaintiff's petition for relief from a deficiency assessment regarding Western Oregon Severance Tax and Forest Products Harvest Tax during 1981. In plaintiff's Complaint to this court, he conceded that he harvested marketable timber from lands in his ownership during 1981 tax year. However, the plaintiff alleged that both the Western Oregon Severance Tax Law and the Forest Products Harvest Tax Law are unconstitutional.

On February 27, 1984, the defendant filed a Motion to Dismiss the plaintiff's complaint to this court on the ground that the complaint failed

to state ultimate facts sufficient to constitute a claim. In the alternative, the defendant moved for Summary Judgment.

On April 2, 1984, the plaintiff filed a Motion for Hearing. The court denied both defendant's Motion to Dismiss and the plaintiff's Motion for Hearing and granted the plaintiff 30 days in which to file an amended complaint. The court ruled that the defendant's Motion for Summary Judgment would be held in abeyance until the plaintiff's amended complaint was received.

The plaintiff's Amended Complaint, filed May 1, 1984, contends that the "Oregon Western Severance Tax . . . was imposed on the private land holder with disregard to the ultimate purpose and wording of the law. That the ultimate purposes of the Western Oregon Severance Tax can never be achieved under the present system of taxing enforcement, until the very laws made by the Oregon Revenue Department are recognized by that department". As support of this contention, the plaintiff noted "that there was no significant reduction of taxes for the year 1978, the year in which ORS 321.272 was enacted, removal of ad valorem taxes was not

in evidence."

Plaintiff's Amended Complaint contains no allegations of unconstitutionality of the Western Oregon Severance Tax and the Forest Products Harvest Tax. Plaintiff's Amended Complaint still fails to state ultimate facts sufficient to constitute a claim as required by Rule 18 A. of this court and ORCP Rule 18 A. The plaintiff misconstrues the tax structure created for timber and forest land by the legislature.

The Forest Products Harvest Tax, ORS 321.005 et seq., levies a privilege tax on the harvesting of forest products (ORS 321.015) and by an additional privilege tax on harvesting timber (which is not applicable to the tax years involved in this appeal). ORS 321.027. The purpose of ORS 321.015 is to provide for funds for suppression of forest fires. ORS 321.011. The purpose of ORS 321.027 is to provide funds to defray the costs of administration of the Oregon Forest Practices Act (ORS 321.028), which has nothing to do with the property tax. There is no special provision for exempting plaintiff nor is there any requirement as alleged by plaintiff that a timber owner must

first enter into an agreement expressly agreeing to the State's authority to levy on the harvest.

There is a Western Oregon Small Tract Optional Tax (ORS 321.705 et seq.) which, as the name of the Act indicates, offers qualified owners the right to exercise an option whereby the forest land is taxed alone at its productivity. ORS 321.710. Plaintiff has not alleged any facts with reference to this statute which does require an application for classification under the statute.

The Western Oregon Severance Tax (ORS 321.272) provides that effective January 1, 1978, all timber in Western Oregon shall be exempt from ad valorem taxation and in lieu thereof there is imposed on timber harvested from privately owned land in Western Oregon a severance tax and on the same date all forest land to continue to be taxed under the ad valorem tax. There is no exemption provided a private timber owner nor is there an option provided whereby a private timber owner may elect to come under the statute. The purpose of the Western Oregon Severance Tax is to remove timber in Western Oregon from ad valorem taxation (ORS 321.262 (1)) and to provide a gradual

nondisruptive method of effecting the transition (ORS 321.262(4)). To the end of providing a non-disruptive method of effecting the transition, the legislature provided a procedure whereby a portion of the revenue from the severance tax would be distributed back to the taxing districts. ORS 321.312.

By virtue of the foregoing, no relief can be granted the plaintiff.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff's Amended Complaint be, and hereby is, dismissed, with prejudice.

Dated this 20th day of July, 1984.

Judge Samuel Stewart

Appendix B.

IN THE SUPREME COURT OF THE STATE OF OREGON

TONY WORRE,

Appellant,

v.

DEPARTMENT OF REVENUE,
State of Oregon,

Respondent.

* * * * * *

TC 2092; SC S31006

In Banc

Appeal from the Decree and Opinion of the Oregon Tax Court, Honorable Samuel B. Stewart, Judge.

Argued and submitted March 5, 1985.

Tony Worre, Estacada, filed the appellant's and reply briefs, and argued pro se per Order of February 17, 1985.

Dave L. Canary, Assistant Attorney General, Salem, argued the cause for respondent. With him on the respondent's brief was Dave Frohnmayer, Attorney General, Salem.

CARSON, J.

The decision of the Tax Court is affirmed.

CARSON J.

The issue in this case is whether plaintiff has alleged ultimate facts sufficient to constitute a claim under Oregon Tax Court Rule 18 (TC Rule 18). Pursuant to statutory authority, the Oregon Tax Court has promulgated rules of practice and procedure (effective July 1, 1980) which rules are required to conform, as far as practical, with the "rules of equity practice and procedure in this state." ORS 305.425 (3). The Tax Court has promulgated TC Rule 18, which, in relevant part, is identical to ORCP 18."

"Rule 18.

"CLAIMS FOR RELIEF

"A pleading which asserts a claim for relief, whether an original claim, counterclaim, cross claim, or third-party claim, shall contain:

"A. A plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition.

"* * * * *"

Plaintiff owns approximately 24 acres of land in Clackamas County. In 1981, plaintiff harvested timber from his land. As a result, the Department

of Revenue (Department) issued plaintiff a notice of deficiency claiming amounts due under both the Western Oregon Timber Severance Tax (severance tax), ORS 321.272, 1 and the Forest Products Harvest Tax (harvest tax), ORS 321.015, 2 together with interest and penalties.

Plaintiff appealed the assessment of the severance tax and the harvest tax to the Department, which determined that the assessments were correctly imposed. 3 Plaintiff, without aid of counsel, appealed this decision to the Oregon Tax Court.

On a motion to dismiss filed by the Department, the Tax Court found that plaintiff's complaint failed to state ultimate facts sufficient to constitute a claim, and allowed plaintiff 30 days to file an amended complaint. Following plaintiff's filing of an amended complaint, the Tax Court, again on motion of the Department, held that plaintiff's amended complaint failed to state ultimate facts sufficient to constitute a claim. The Tax Court dismissed plaintiff's amended complaint with prejudice.

Plaintiff's amended complaint correctly states that ORS 321.257 to 321.372 replaced the ad

valorem tax on timber in western Oregon with a severance tax. The severance tax was effective January 1, 1978. ORS 321.272(1). Unlike the old ad valorem tax on timber, the severance tax is administered by the Department rather than by the county. See ORS 321.257 to 321.372. However, administration of the ad valorem tax on taxable real and personal property remains the initial responsibility of the county. See, e.g., ORS Chapters 308 and 311. Plaintiff contends that the county continued to subject his timber to the ad valorem tax as "there was no significant reduction of (property) taxes for the year 1978." Thus, plaintiff argues, he should not be subject to the severance tax as the "removal of ad valorem taxes from timber . . . is necessary and conditional for imposition of the severance tax."

Plaintiff does not allege that either the severance tax or the harvest tax was incorrectly calculated, nor does plaintiff allege any facts to support his claim that he should be excepted from the severance tax or the harvest tax. Plaintiff's bare assertion that the Department should be precluded from assessing the severance or harvest

tax as a result of Clackamas County's assessment of the real property ad valorem tax is not a sufficient allegation of facts to constitute a claim. 4 Plaintiff, as best the record discloses, did not attack the real property ad valorem tax assessed by the county. ORS 309.106 to 309.120, 311.806.

Affirmed.

Judge J. Carson

FOOTNOTES

1.

ORS 321.272 provides:

"(1) Effective January 1, 1978, all timber in western Oregon shall be exempt from ad valorem taxation and in lieu thereof, there is imposed on timber harvested from privately owned land in western Oregon a severance tax as provided in ORS 321.257 to 321.342.

"(2) Effective January 1, 1978, all forest land in western Oregon shall be assessed and taxed and the value determined under ORS 308.205, 308.232, 321.352 and 321.357."

2.

ORS 321.015 (1) provides:

"There hereby is levied a privilege tax upon taxpayers on the harvesting of all merchantable forest products harvested on merchantable forest lands for the fiscal year beginning July 1, 1953, and for each fiscal year thereafter, in the amount provided in ORS 321.025 and 321.035."

3.

Plaintiff appeared in his own behalf at the hearing before the Department and contended that

the severance tax was unconstitutional. The hearings officer found that, because plaintiff had failed to present any caselaw or other legal rationale that would entitle him to relief, his appeal must be denied and the disputed assessments sustained.

4.

Plaintiff, in his original complaint also alleged that the severance tax and the harvest tax violated Article 1, section 32 and Article IX, section 1, of the Oregon Constitution and the Fifth, Seventh and Fourteenth Amendments to the United States Constitution. However, plaintiff's amended complaint contains on allegations of unconstitutionality of the severance and harvest taxes. Because the amended complaint is "complete in itself, without reference to the original," TC Rule 23 F. (cf. ORCP 23 D.), the issue of constitutionality of the taxes is not properly before this court.

Appendix C.

IN THE SUPREME COURT OF THE STATE OF OREGON

TONY WORRE

Appellant,

v. ORDER DENYING

DEPARTMENT OF REVENUE, STATE OF OREGON, RECONSIDERATION

SC S31006

Respondent.

The Court has considered the petition for reconsideration and ORDERS that it be denied.

DATE: August 20, 1985.

/s/ EDWIN J. PETERSON

EDWIN J. PETERSON
Chief Justice

Copies: Tony Worre
David Lee Canary

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Petition for Appeal (3 copies) upon the Oregon Supreme Court, Salem, Oregon, on the 31st day of Oct. 1985 by mailing to the Supreme Court a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, and deposited in the Post Office at Estacada, Oregon, on said day.

DATED this 31st day of Oct. 1985.

TONY WORRE,

Petitioner, Pro Se.

Tony Worre